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Supreme Court, U.S.
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No. 04-116

IN THE

Supreme Court of the United States

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Petitioner,

v.

INEZ PREECE CAMPBELL and MATTHEW C. BARNECK, Special Administrator and Personal Representative of the ESTATE OF CURTIS B. CAMPBELL,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UTAH SUPREME COURT

REPLY BRIEF

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STATEMENT PURSUANT TO RULE 29.6

Petitioner's corporate disclosure statement was set forth at page *ii* of its Petition for a Writ of Certiorari, and there are no amendments to that statement.

TABLE OF CONTENTS

Page

STATEMENT PURSUANT TO RULE 29.6 i

TABLE OF AUTHORITIES iii

ARGUMENT 1

I. The Utah Supreme Court's Reprehensibility Analysis Is Contrary to This Court's Opinion and Mandate. 2

A. The Utah Supreme Court's Analysis of the Reprehensibility Factors Was Erroneous. 3

B. The New Punitive Damages Award Unconstitutionally Punishes State Farm's Purported Lack of Remorse in Defending Itself in This Case. 6

II. The Utah Supreme Court's Application of the Ratio Guidepost Is Erroneous and Contrary to This Court's Mandate 8

III. The Utah Supreme Court Erred in Its Application of the Civil Penalties Guidepost 9

CONCLUSION 10

TABLE OF AUTHORITIES

Cases **Page(s)**

BMW of North America, Inc. v. Gore, 517 U.S. 559 (1996) 7, 10

Metropolitan-North Commuter Railroad Co. v. Buckley, 521 U.S. 424 (1997) 4

Pacific Mutual Life Insurance Co. v. Haslip, 499 U.S. 1 (1991) 7

State Farm Mutual Automobile Insurance Co. v. Campbell, 538 U.S. 408 (2003) ..... *passim*

Sumner v. Mata, 455 U.S. 591 (1982) 10

Vance v. Terrazas, 444 U.S. 252 (1980) 9

Statutes **Page(s)**

Utah Code Ann. § 31A-2-308(9)(a) 10

Other Authorities **Page(s)**

Restatement (Second) of Torts § 436A (1965) 4

Robert L. Stern et al., *Supreme Court Practice* 322 n.101 (8th ed. 2002) 10

ARGUMENT

Plaintiffs' opposition rests upon two fundamentally erroneous propositions: first, that State Farm's petition for certiorari presents "factbound" questions for this Court's determination, and second, that the Utah Supreme Court fully complied with this Court's mandate because that mandate was limited to recalculating the punitive damage award by excluding punishment for out-of-state conduct. Opp. at 1-2. The truth of the matter, however, is that by this petition, State Farm raises important legal, constitutional questions as to whether the Utah Supreme Court correctly applied the due process principles delineated by this Court in this very case, which limit and restrain punitive damages. The pertinent facts need not be "found" by this Court, nor need they be re-analyzed or re-argued; rather they are precisely the same facts that were already before this Court, and noted by this Court, when it wrote its earlier opinion marking the boundaries of constitutionally permissible punishment, not only in general, but in this case specifically. The Utah Supreme Court has looked to those same facts, but re-engineered the analysis to justify a drastic and constitutionally impermissible departure from this Court's guidance.

Ignoring the plain language of this Court's opinion in this case, plaintiffs assert that "[t]his Court never asked the question necessarily posed by State Farm's latest petition: what would be the highest allowable award upon considering only State Farm's conduct that (a) occurred in Utah and (b) relates to the harm suffered by the Campbells?" Opp. at 11. This Court considered and resolved precisely that question, concluding that "[a]n application of the *Gore* guideposts to the facts of this case, especially in light of the substantial compensatory damages awarded (a portion of which contained a punitive element), likely would justify a punitive damages award at or near the amount of compensatory damages." *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 429 (2003). Moreover, this Court's discussion of the constitutional principles relevant to that conclusion and its application of those principles to the factual circumstances of State Farm's conduct toward the Campbells occupies considerably more than half of the Court's analysis of the punitive award in this case. This substantial portion of the Court's

opinion was not, as Plaintiffs termed it before the Utah Supreme Court, "little more than the expression of a judicial hunch" that the Utah Supreme Court was free to disregard.

Plaintiffs emphasize the Utah Supreme Court's protestations of "unwavering fidelity to the letter and spirit" of this Court's mandate. *See* Opp. at 5 (quoting A.2); *see also id.* at 9, 24. In fact, it is difficult to find an opinion by any court that on remand from this Court paid so much lip service to, yet so egregiously disregarded, this Court's guidance, as the Utah Supreme Court's decision. The $9 million punitive damages award now imposed by the Utah Supreme Court is inconsistent with this Court's opinion and is arbitrary and excessive in violation of due process. This Court should grant certiorari to ensure that its mandate is properly carried out in this case. "Further percolation" in the lower courts, as suggested by plaintiffs (Opp. at 8), will be of no benefit if the Utah Supreme Court's misapplication of the constitutional principles governing the due process punitive damages inquiry is allowed to stand. Reversal of the Utah Supreme Court's decision is essential to ensure that this Court's guidance is heeded by the lower courts.

I. The Utah Supreme Court's Reprehensibility Analysis Is Contrary to This Court's Opinion and Mandate

The Utah Supreme Court's overall conclusion as to the reprehensibility of State Farm's conduct towards the Campbells and its subsidiary conclusions as to the application of the five reprehensibility factors are irreconcilably contrary to this Court's opinion and mandate. In its analysis of the reprehensibility guidepost, this Court fully considered and in many instances specifically referenced the factual findings previously made by the Utah courts: *e.g.*, that the lawyer hired by State Farm to defend Mr. Campbell in the original trial of the third-party claims against him purportedly told Mr. Campbell after the verdict to put a "for sale" sign on his house, that State Farm employees testified that they were "proud" of State Farm, that State Farm purportedly manufactured the story that one of the other drivers in the accident was speeding on the way to see his pregnant girlfriend, and so on. *See Campbell*, 538 U.S. at 412-13, 419-20, 426; *see also id.* at 432 (Ginsburg, J., dissenting).

The Utah Supreme Court's hyperbolic and tendentious characterization of the same facts considered by this Court not only is contrary to this Court's reasoned analysis, but has produced an arbitrary and extreme punitive damages award that does not satisfy due process. The issues raised by the Utah Supreme Court's new analysis of reprehensibility are not issues of fact, but are legal issues regarding the proper application of due process principles and proper adherence to the letter and spirit of this Court's mandate.

A. The Utah Supreme Court's Analysis of the Reprehensibility Factors Was Erroneous

Plaintiffs incorrectly argue that the Utah Supreme Court's holding that plaintiffs' harm in this case was "akin to physical assault" (A. 10) can permissibly support that court's conclusion that State Farm's handling of the claims against Mr. Campbell showed extreme reprehensibility. The Utah Court's holding, however, is contrary to the clear import of this Court's evaluation of the harm in this case as involving "no physical injuries" and "ar[ising] from a transaction in the economic realm, not from some physical assault or trauma." *Campbell*, 538 U.S. at 426. Under this Court's analysis, the factual circumstances giving rise to the Campbells' harm pointed to a lesser degree of reprehensibility than harm involving physical assault or injury. The Utah Supreme Court's conclusion that the Campbells' harm was "akin to physical assault" simply cannot be harmonized with this Court's opinion (much less with the facts of this case).

Moreover, in defending the Utah Supreme Court's characterization of the emotional distress in this case as "akin to physical assault," plaintiffs improperly accuse State Farm of misstating the record with regard to the lack of any objective evidence of plaintiffs' emotional distress. Plaintiffs claim that "State Farm's assertion that, 'as the trial court found, the record was devoid of "objective evidence of emotional or mental distress"'" is "emblematic of the Petition's misstatements of the record." *See* Opp. at 13. In fact, the words quoted by State Farm are the words of the trial court itself, which specifically found that there was an "absence in the record of any objective evidence of emotional or mental distress." JA 3364. Thus, there was no evidence that either Mr.

or Mrs. Campbell ever sought or underwent psychiatric or medical treatment for emotional distress, and the Campbells did not have a medical expert testify at trial as to their alleged emotional distress.[1] Courts across the country have long recognized that the objective manifestation of emotional distress is an important safeguard of the genuineness of emotional distress claims. *See, e.g., Metro-North Commuter R.R. Co. v. Buckley*, 521 U.S. 424, 445 (1997) (Ginsburg, J., concurring in part, dissenting in part); Restatement (Second) of Torts § 436A (1965). Thus, the trial court's finding that there was no objective evidence of the Campbells' emotional distress in this case is legally significant and is directly relevant to the Utah Supreme Court's erroneous assessment of the harm in this case as "akin to physical assault."

Furthermore, in its analysis of reprehensibility, this Court made plain that State Farm was not a "recidivist." 538 U.S. at 423. The Utah Supreme Court's reliance on the speculative and imaginary need to deter State Farm from similar acts in the future is precluded by that determination. Plaintiffs attempt to harmonize the Utah Supreme Court's analysis of this factor by stating that the Utah court "focused not on recidivism but on State Farm's propensity to commit further misconduct in the future," claiming that purported "propensity" is "separate from and not foreclosed by this Court's finding that State Farm was, at the time of trial, not a recidivist." Opp. at 17. The trial in this case took place in 1996, nearly 13 years after the excess verdict against Mr. Campbell. Thus, at the time of trial, it was not only clear that State Farm had never *before* the Campbell case refused a settlement offer and then exposed the insured to execution on an excess verdict, but it was clear that State Farm had not repeated its conduct in the 13 years *after* the Campbell case.

Plaintiffs now incorrectly and disingenuously claim that State Farm "misstate[d] the evidence" when it pointed out in its Petition that the evidence at trial showed "no similar subsequent bad acts." Opp. at 17. Plaintiffs argue that "[a]t trial

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[1] The trial court also stated that there was "a relatively limited period of time in which the primary stressor – that is, the threat of financial ruin – was a real threat to the Campbells." JA 3364.

State Farm was forced to acknowledge there were at least seven excess verdict third-party cases in Utah between 1978 and 1995." *Id.* at 18. It is uncontested that the evidence showed that State Farm resolved all seven excess verdict cases so that its insureds personally paid nothing and were not exposed to execution on the excess portion of the verdicts.[2] Indeed, this Court, having had the parties' briefing on the issue of the seven excess verdicts before it, ruled that plaintiffs "ha[d] shown no conduct by State Farm similar to that which harmed them." 538 U.S. at 424.[3] Plaintiffs' attempt to reargue this point is precluded by this Court's ruling. The Utah Supreme Court's punishment of State Farm as a potential recidivist is wholly speculative and contrary to this Court's ruling and to the fundamental principles of this Court's punitive damages jurisprudence.

Likewise, with regard to the other reprehensibility factors (whether the conduct showed "indifference or reckless disregard for the health and safety of others," whether the "target of the conduct had financial vulnerability," and whether the harm was the result of trickery, deceit, or mal-

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[2] Plaintiffs improperly attempt to bolster the Utah Supreme Court's speculation that State Farm might become a recidivist by citing to purported "testimony that State Farm subsequently failed to instruct its employees not to engage in the offending conduct, JA 2454; and by testimony that State Farm failed to discipline any employee. JA 2455." Opp. at 19. Both of these citations are to testimony by plaintiffs' expert Steven Prater that relates to dissimilar conduct that this Court has excluded from consideration in this case. *See* JA 2454 (Prater testimony regarding superseded State Farm manuals); JA 2455 (discussing testimony by State Farm ex-employee that she felt pressured to "reduce her average paid claims").

[3] The testimony of State Farm's regional vice president Buck Moskalski regarding State Farm's "peace of mind" letters was also discussed in the parties' briefs before this Court. Contrary to Plaintiffs' contentions, the "Peace of Mind" letters cited in State Farm's Petition were submitted with State Farm's Petition for Rehearing before the Utah Supreme Court, were not stricken or rejected, and are part of the record. Plaintiffs' assertions that State Farm had "revoked" its policy of sending "peace of mind letters" are incorrect and are based not on evidence, but on allegations in a 2001 complaint filed against State Farm by two ex-employees. Neither that complaint nor any other material submitted by plaintiffs claims that State Farm had ever again exposed any Utah insured to execution on an excess verdict after refusing a settlement offer within policy limits.

ice), the factual conclusions drawn by the Utah Supreme Court and the Utah trial court were before this Court and were discussed in the parties' briefing.[4] In particular, the Campbells' "vulnerability," to which plaintiffs now devote nearly two pages of their brief, was discussed in the parties' earlier briefing before this Court and in Justice Ginsburg's dissent. *See* 538 U.S. at 434; Pet. at 11-12. The Utah Supreme Court's legal conclusion that such facts evince extreme reprehensibility is contrary to this Court's legal conclusion that they do not.

B. The New Punitive Damages Award Unconstitutionally Punishes State Farm's Purported Lack of Remorse in Defending Itself in This Case

The Utah Supreme Court's new reprehensibility analysis was also based upon a factor not included in this Court's list of reprehensibility factors – namely, State Farm's supposed lack of remorse, pride and defiance, as demonstrated by the testimony at trial of State Farm employees that they were "proud" of State Farm and State Farm's failure to express remorse in its appeal briefs to the Utah Supreme Court. *See* Pet. at 20-25. Plaintiffs assert that State Farm's "complaint" that the Utah Supreme Court "punished it impermissibly for its 'appellate briefing' is baseless." Opp. at 19. To the contrary, the Utah Supreme Court's decision expressly relied upon State Farm's appellate briefing as a basis for punitive damages. *See* A.13; Pet. at 20-21, 24. By considering matters such as State Farm's purported failure to show remorse at trial and in its appeal briefs, the Utah Court impermissibly widened the reprehensibility inquiry beyond "the conduct that harmed" the Campbells, which this Court stated was "the

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[4] Plaintiffs' allegations of trickery and deceit in State Farm's handling of the claims against Mr. Campbell were based upon the purported fact that State Farm supervisor Bob Noxon manufactured the "story" of Todd Ospital's speeding to see his pregnant girlfriend. Plaintiffs now improperly take issue with State Farm's footnote discussion regarding the genesis of that purported fact. *See* Pet. at 16 n.8. The deposition cited by State Farm was not, as plaintiffs claim, "inadmissible and uncorroborated hearsay" "dredged up" by State Farm (Opp. at 7), but was published to the jury at trial on State Farm's motion. R.10268:58 (Trial Tr. 6/25/96, at 13-58). The deposition was inadvertently omitted from the record on appeal, but has now been restored to the record. *See* Pet. at 16 n.8.

only conduct relevant to the reprehensibility analysis." 538 U.S. at 424. Plaintiffs do not explain how State Farm's appellate briefing and trial testimony by State Farm employees, including testimony by employees such as Paul Short who were not involved with the handling of the third-party claims against Mr. Campbell, could be deemed part of the conduct that harmed the Campbells or similar to that conduct.

Moreover, the Utah Supreme Court's punishment of State Farm's lack of remorse cannot be justified by that court's invocation of "Utah's values and traditions." A.7. Plaintiffs mischaracterize State Farm's petition as arguing that the Utah Supreme Court's mere "reference to 'Utah's values and traditions'" "represents a violation of federal due process." Opp. at 22. State Farm contended in its petition that the Utah Supreme Court impermissibly relied upon "Utah's values and traditions" to justify its departure from this Court's mandate and the federal constitutional due process analysis set out by this Court. Pet. at 16-20. State Farm does not dispute that state law may provide principles that work to constrain punitive damages and that this Court has approved such state law principles as protecting a defendant's due process right not to be subjected to arbitrary and excessive punishments. *See, e.g., BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 588 (1996) (Breyer, J., concurring) (a state's legal standards "must offer some kind of constraint upon a jury or court's discretion, and thus protection against purely arbitrary behavior"). Utah's values and traditions, however, as interpreted by the Utah Supreme Court, clearly do not offer any "significant constraints or protection against arbitrary results," but simply "provide an open-ended basis for inflating awards" where a defendant has chosen to defend against liability. *See id.* at 588, 591. Moreover, the Utah Supreme Court's invocation of this vague and elastic standard fails to provide the constitutionally required notice of what conduct may subject a defendant to a multi-million dollar penalty. Contrary to plaintiffs' contentions (Opp. at 22-23), this Court has not approved the kind of subjective, *ad hoc* application of state "values and traditions" engaged in by the Utah Supreme Court on remand in this case. *See BMW*, 517 U.S. at 588; *see also Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 22 (1991) (approving state law standards that "impose[] a

sufficiently definite and meaningful constraint" on punitive damages awards).[5]

Plaintiffs also complain that "State Farm's 'remorse' argument, if taken seriously, would invalidate the 'acceptance of responsibility' provision of the Sentencing Guidelines." Opp. at 20. The issues raised by the Utah Supreme Court's reliance on State Farm's purported lack of remorse at trial and in its appeal briefs have nothing whatsoever to do with criminal sentencing procedures. Indeed, this Court pointed out in this case that although punitive awards "serve the same purposes as criminal penalties, defendants subjected to punitive damages in civil cases have not been accorded the protections applicable in a criminal proceeding." 538 U.S. at 417. There is no statutory sentencing range to cabin the discretion of the court and jury, no statutory definition of the elements of conduct that may be punished, and no requirement of proof beyond a reasonable doubt. The Utah Supreme Court's reliance on State Farm's alleged failure to express remorse at trial and in its appeals briefs impermissibly burdens State Farm's due process right to defend itself in litigation and is inconsistent with this Court's opinion.

II. The Utah Supreme Court's Application of the Ratio Guidepost Is Erroneous and Contrary to This Court's Mandate

Plaintiffs assert that this Court did not intend to hold that a 1 to 1 ratio between punitive and compensatory damages was the constitutional maximum in this case. Opp. at 4, 9. Contrary to Plaintiffs' assertion, this Court made clear that while the possibility remained that an even lower ratio might be the constitutionally justifiable maximum, a 1 to 1 ratio was likely justifiable. As the Court stated, "[a]n application

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[5] Nor can the Utah Supreme Court's reliance on State Farm's purported lack of remorse be justified (as plaintiffs contend) as relevant to the possibility that State Farm would "'repeat [its] crime.'" Opp. at 20 (citation omitted); *see also id.* (State Farm "was not punished for its 'trial tactics and litigation conduct,'" but "in view of the likelihood that it would repeat its misconduct in the future."). Given that plaintiffs have shown no other instance of similar conduct by State Farm in Utah in the more than twenty years since the excess verdict against Mr. Campbell, any possibility of repetition is purely speculative. *See* Pet. at 13-15; *supra* at 4-5.

of the *Gore* guideposts to the facts of this case, especially in light of the substantial compensatory damages awarded (a portion of which contained a punitive element), likely would justify a punitive damages award at *or near* the amount of compensatory damages." 538 U.S. at 429 (emphasis added).

State Farm respectfully submits that if the principle enunciated by this Court that "[w]hen compensatory damages are substantial, then a lesser ratio, perhaps only equal to compensatory damages, can reach the outermost limit of the due process guarantee," *id.* at 425, is ever to be applicable, it must be applied in this case, as this Court admonished. Moreover, although this Court's conclusion that this principle should govern in this case was buttressed by this Court's further conclusion that the compensatory award in this case contained a punitive component, it did not depend upon it. *See* Pet. at 28. Nonetheless, the Utah Supreme Court was not free to disregard this Court's conclusion that the emotional distress damages in this case contained a punitive component. 538 U.S. at 429. Nor was this issue within the "sole purview of the Utah court" by virtue of State Farm's "never having sought review in this Court on any of the components of that definition of compensable injury," as plaintiffs claim (Opp. at 25). *See, e.g., Vance v. Terrazas*, 444 U.S. 252, 258 n.5 (1980) ("consideration of issues not present in the . . . petition for certiorari . . . is not beyond our power, and in appropriate circumstances we have addressed them"). In imposing punitive damages in a 9 to 1 ratio, the Utah Supreme Court impermissibly disregarded this Court's mandate and exceeded the due process limit on punitive damages in this case.

III. The Utah Supreme Court Erred in its Application of the Civil Penalties Guidepost

Plaintiffs contend that the fact, noted by the Utah Supreme Court in its new opinion (A. 17), that Utah's statutory $10,000 fine for a single act of fraud is the same as the fine that may be imposed upon an individual for the commission of a first degree felony, "reflects the [Utah] legislature's determination that the company's misconduct was very serious indeed." Opp. at 27. In fact, there is no statutory penalty in Utah for the precise conduct at issue in this case, and the Utah legislature has made no such determination as the plaintiffs

claim. Moreover, it is not reasonable to suppose that the Utah legislature intended, by its setting of a $10,000 fine, to convey its determination that a single instance of insurance company misconduct was as serious as a "first degree felony," as plaintiffs claim. Opp. at 27. To the contrary, under the Utah statutory provision setting forth the relevant comparable civil penalty of $10,000, a violation of Utah insurance law is specified to constitute a class B misdemeanor. *See* Utah Code Ann. § 31A-2-308(9)(a). That $10,000 fine – acknowledged by the Utah Supreme Court to be the relevant legislative penalty in this case – gave no "fair notice" that a single violation "might subject an offender to a multimillion dollar penalty," *see BMW*, 517 U.S. at 584, and clearly signals the excessiveness of the $9 million punitive damages award imposed by the Utah Supreme Court on remand.

CONCLUSION

This Court should grant State Farm's petition for a writ of certiorari. By disregarding this Court's carefully reasoned analysis and conclusions, the Utah Supreme Court failed to adhere to this Court's mandate, and therefore summary reversal pursuant to Supreme Court Rule 16 is warranted. *See, e.g.*, *Sumner v. Mata*, 455 U.S. 591, 596-97 (1982) (granting certiorari and summarily vacating where the lower court "apparently misunderstood the terms of our remand" and reached a result inconsistent with the Court's prior opinion); Robert L. Stern et al., *Supreme Court Practice* 322 n.101 (8th ed. 2002) ("Summary reversal may . . . be grounded on the inherent power of the Court . . . to ensure compliance with its own remand orders"). Accordingly, this Court should summarily reverse the Utah Supreme Court's decision and instruct the Utah Supreme Court to enter a punitive damages award "at or near" the amount of compensatory damages, *i.e.*, no more than $1 million. *See Campbell*, 538 U.S. at 429. In the alternative, this Court should afford plenary review, with briefing and oral argument by the parties, of the important constitutional issues raised by the Utah Supreme Court's decision.

Respectfully Submitted,

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